

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELETTRA MEEKS, et al.,

Plaintiffs,

v.

EXPERIAN INFORMATION
SOLUTIONS, INC., et al.,

Defendants.

Case No. 21-cv-03266-VC

**ORDER DENYING DEFENDANT'S
MOTION TO COMPEL
ARBITRATION**

Re: Dkt. No. 20

The motion to compel arbitration filed by Experian Information Solutions is denied. When the plaintiffs registered for the CreditWorks service, they agreed to its Terms of Use, which contain an arbitration provision. But the Terms of Use Agreement establishes a contract between the plaintiffs and ConsumerInfo.com—not Experian Information Solutions. The Agreement specifies that, “[f]or purposes of this Agreement, the terms ‘we,’ ‘us’ or ‘ECS’ refer to ConsumerInfo.com, Inc., . . . its predecessors in interest, successors and assigns, and any of its third party service providers.” Dkt. No. 20-2 at 47. Experian Information Solutions does not fall within this definition and is therefore not a party to the agreement.

A non-party to an agreement can enforce an agreement's arbitration clause as a third-party beneficiary. *See Murphy v. DirecTV, Inc.*, 724 F.3d 1218, 1233 (9th Cir. 2013). There may well be an argument that the Terms of Use Agreement makes Experian Information Solutions a third-party beneficiary of the arbitration provision. However, Experian Information Solutions did not argue in its motion to compel that it is a third-party beneficiary, so it has forfeited that argument. *See id.* at 1233-34. Furthermore, even though the plaintiffs noted in their opposition brief that the only possible path to victory for Experian Information Solutions was through a

third-party beneficiary theory, in its reply brief the company expressly declined to make that argument. It instead relied wholly on its argument that it is a party to the Agreement. Because that argument is wrong, the motion to compel arbitration must be denied.

IT IS SO ORDERED.

Dated: August 31, 2021



VINCE CHHABRIA
United States District Judge